Complaints: In-House and Third-Party Strategies

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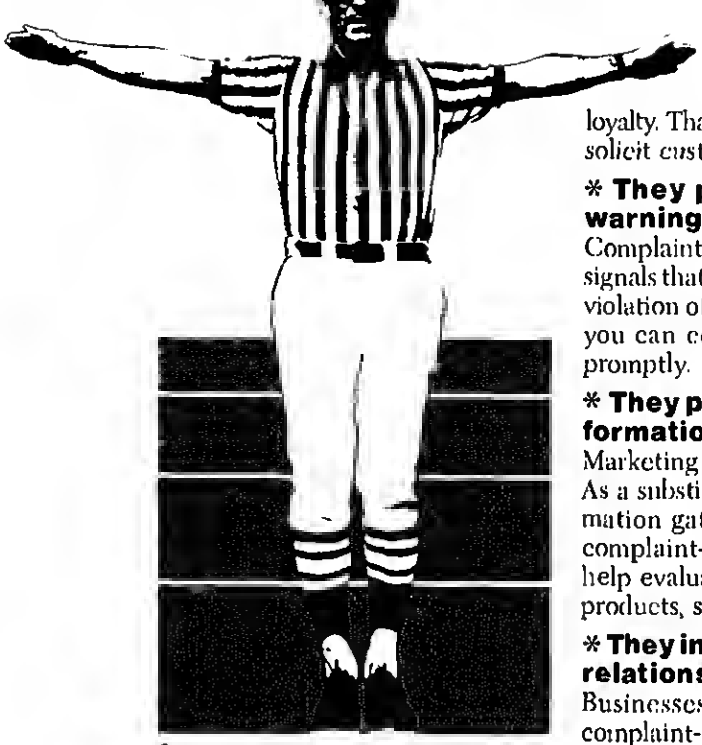


Continuing Action: willingness to go one step more increases customer confidence.

Over the years, businesses have developed numerous ways of dealing with customer complaints. The approach may be as simple as having a single person — perhaps the owner of the business — listen and respond to dissatisfied customers. Other businesses prefer customer complaint-handling programs which back up their in-house systems with third-party review. Whatever their scope, complaint-handling programs are growing in popularity because — as we've learned in discussions with business officials across the country — effective programs offer important benefits for customers and businesses alike:

*** They serve as a real selling point.**
Businesses are always looking for new ways to attract customers. Letting potential purchasers know you have a responsive customer satisfaction program is clearly a strong selling point.

*** They keep customers satisfied and loyal.**
A national consumer survey showed that customers who complained about their problems and received satisfactory results displayed the highest degree of continued brand loyalty. That's why many companies solicit customer complaints.

*** They provide built-in warning signals.**
Complaints provide early warning signals that your business may be in violation of consumer laws, so that you can correct the problem promptly.

*** They provide valuable information.**
Marketing surveys are expensive. As a substitute, you can use information gathered through your complaint-handling program to help evaluate the quality of your products, services, and personnel.

*** They improve government relations.**
Businesses find that well-run complaint-handling programs improve their relationships with government and private consumer protection offices.

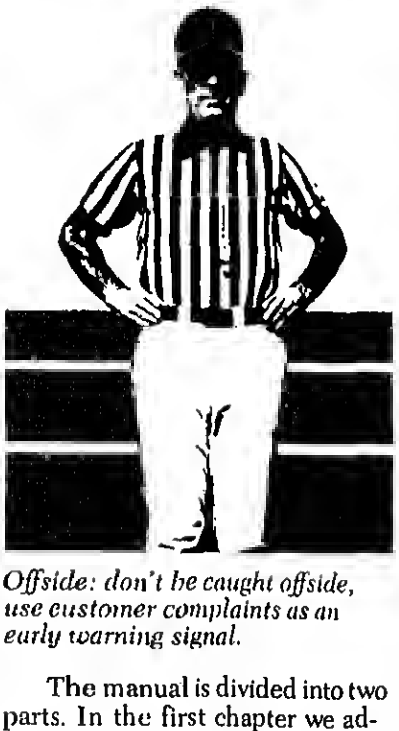
*** They help to correct problems quickly.**
An effective complaint-handling program gives a business an opportunity to correct customer problems before they lead to bruised relationships, or worse, to lawsuits.

The goal of this manual is to provide guidance to businesses in developing comprehensive complaint-handling programs. The information contained in the manual is based on our discussions with businesses, customer reactions to various complaint-handling techniques, a thorough search of the existing literature, our recommendations concerning dispute resolution provisions in various legislative proposals, and our ongoing work with businesses in helping them design and evaluate in-house and third-party complaint-handling programs.

Many readers may already be aware of the FTC's Rule on Informal Dispute Settlement [Rule 703, 16 C.F.R. § 703 (1980)], authorized by the Magnuson-Moss Warranty Act enacted by Congress in 1975. This rule sets forth minimum standards for dispute resolution procedures which businesses may voluntarily incorporate into

their written warranties. Our monitoring of the programs operating according to Rule 703 has provided additional ideas for implementing third-party complaint-handling programs. This manual was written to help you design or select a third-party program regardless of whether you adopt the standards set forth in Rule 703.

Each business has different needs and resources and will therefore want to select a complaint-handling program which accounts for these factors. In selecting a program, we recommend that you consider some basic points which we describe in the manual.



Offside: don't be caught offside, use customer complaints as an early warning signal.

The manual is divided into two parts. In the first chapter we address procedures for resolving customer complaints within the framework of the business (in-house complaint-handling programs). Most complaints can be handled in this manner. We encourage you to use our checklist for in-house programs to evaluate whether your business' existing program is as effective as it could be. We've also compiled a short bibliography of resource materials which discuss the nuts and bolts of implementing an in-house complaint-handling program.

In the second chapter we discuss third-party dispute resolution, which involves the services of an independent person or persons to settle complaints that are not resolved by the business' in-house program. This section reviews a variety of third-party resolution techniques, gives you an overview of current programs, and provides a step-by-step guide to the selection of a third-party program. *References to specific programs are provided as examples only and are not intended as Commission endorsements of any of the programs mentioned.*

Private third-party dispute resolution procedures have been used successfully for over fifty years, primarily in resolving commercial and labor-management disputes. In the last decade, the use of public and private third-party dispute resolution techniques has expanded to a number of new contexts, including medical malpractice, domestic disputes, landlord-tenant conflicts, inmate grievances and, increasingly, consumer-merchant disputes.

Businesses employing this approach have indicated that third-party programs work well as a backup or appeal process for their in-house systems, whenever there is an impediment to agreement — for example, when a dispute has become emotionally charged or when it involves complex factual issues. In these cases and others, third-party programs can provide an impartial and inexpensive method for settling disputes.

To date, third-party complaint-handling procedures have been used by every kind of business from small and moderate-sized retailers, manufacturers, and service organizations to large corporations, and in such diverse areas as housing, appliances, automobiles, and home furnishings. The automobile companies have been especially active in this field, and their experience seems to indicate that third-party programs, while requiring an initial investment, make good

Incomplete Pass: a third-party system is a good backup when your in-house complaint progra has dropped the ball.

business sense in the long run executive of the Ford Motor C pany cited some of the benefi Ford's Consumer Appeals Boa program:

* Both Ford and its dealers h become more responsive to lo mate customer problems.

* Ford believes the program have a positive bottom-line imp Marketing research indicates program has broad appeal and influence the buying conside tions of Ford owners as well owners of competitive produc

* The program appears to be ing the very positive effect of creasing the number of lawsu filed against Ford and its deal

The Commission hopes to continued development and exp mentation by businesses in the of consumer-merchant dispu resolution. The FTC's Dispu Resolution Program is ready t offer advice, consultation, and ther information.

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Disputes from Within

Most businesses attempt to resolve customer complaints in-house, without resorting to an outside organization for conciliation, mediation, or arbitration services. Since no outsiders are involved, an in-house program can operate quickly and inexpensively. In addition, since an in-house program naturally is identified with the business, a program which resolves complaints quickly and fairly will build customer loyalty.

Organizing an In-House Program

Generally, there are two principal methods of organizing an in-house complaint-handling program: 1) the centralized approach, which places responsibility for all complaints in a specific department, and 2) the more informal, decentralized approach, which gives each employee or branch office broad responsibility for resolving complaints.

Many businesses have found their needs are best met with a combination of the two approaches. One Washington, D.C. department store chain, for example, uses a central consumer affairs office to handle complaints involving larger, more expensive items such as appliances and furniture. Other complaints, especially ones that don't

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design considerations to evaluate your present complaint-handling program. Additionally, talk to customers who have brought complaints in the past and ask them to assess the way they were treated. Were they satisfied with what happened, or did they walk away from the process feeling dissatisfied?

Regardless of the in-house approach you decide to adopt, *it's good to keep the following checklist of design considerations in mind:*

Consistency

Establish uniform procedures for receiving, acknowledging, and resolving complaints. If possible, put your policies on paper. Include general statements in your policy paper ("we will do everything we reasonably can to satisfy the customer") and specific guidelines (for example, which employees are authorized to handle complaints and how much discretion they can exercise under specific circumstances).

Avoid any procedure that shuffles customers from one department to the next. Whether complaints are received by mail, telephone, or in-person, standardized complaint forms will ensure that all necessary information is gathered from the start.

From time to time you may want to bring employees together for an informal session to discuss the strengths and weaknesses of the program. If necessary, offer training seminars where employees can respond to trial situations. Monitor your in-house program to see how consistently and effectively it works.

Accessibility

Develop ways to publicize your program. Some stores use shopping bag inserts to tell customers about complaint-handling procedures. One retail chain store sends out information about its in-house program with its monthly statements,

booklets. Two major retail store include "hotline" numbers in the warranty information. You may al want to promote your complain handling policy in advertisemen

In any event, be sure to con sider the special needs of your customers. Provide information both English and Spanish, for example, if many of your custo ers are Spanish-speaking. And f all customers make the system simple, clear, and convenient. Co plaints should be accepted duri all hours you're open for busine whether they are filed in-person by phone. If you're using a cent customer relations office, make easy to find. If the system is dece tralized, encourage sales personn to handle complaints courteous and fairly. If supervisors are need to handle complaints that fall o side the sales staff's jurisdiction make sure they are available at times.

Remember that a customer first impression will often set th tone for whatever follows. Too oft that first impression is negative One study found that 54 percent the customers who reported co plaints did not consider the firs person they contacted helpfu That's another reason it's so im portant to brief your sales staff about how your complaint-handl program operates.

Promptness

The longer it takes to resolve a complaint, the more time you lo from your business operations a the more likely frustrated custo ers will take their future busine elsewhere. Even if all you do is acknowledge receipt of a complai customers will appreciate your sponding quickly — within two three days if possible.

Using form letters clearly c down on time and costs. Many small businesses develop four o five form letters for the most f

In some instances, of course, a personal response is called for. Where an immediate written response is necessary, such as with problems involving total product breakdowns or unsafe conditions, consider using mailgrams or telegrams.

Keep things moving along. Set time limits and monitor caseloads to insure that your internal time schedule is being followed.

Objectivity

Make certain the customer has an opportunity to present his or her case. Each customer also should have the chance to answer questions or respond to any conflicting information received by the complaint-handler.

To aid in resolving disputes involving complex products, such as major appliances and other "big-ticket" items, consider employing staff with expertise in these key areas. One large department store chain has both a staff of product experts who serve as complaint-handlers and a special information "hot line" customers can use to have questions answered promptly. Basic maintenance questions often can be handled this way, preventing the need for home service visits. The store believes this system prevents many small problems from developing into major headaches.

A centralized complaint-handling program insulates the consumer affairs office from pressures felt at the retail level. In a decentralized program, where compensation is often based on commissions, employees may be reluctant to grant refunds, even where they are appropriate, because refunds mean lost commissions. To avoid this problem, at least two major retail chains with decentralized systems prohibit sales employees from rejecting complaints without referring them to a superior. This allows the customer the benefit of an informal "appeal" system and also helps the store achieve a uniform complaint-handling policy. If you've adopted a decentralized system, you may also want to consider a bonus or promotion procedure based in part on a salesperson's complaint-handling performance.

Monitoring

Data gleaned from an in-house complaint-handling program can be extremely helpful in a number of ways. By systematically analyzing past complaints you can identify particular problem products, suppliers, stores, or employees. Many complaint-handling offices present their findings in periodic reports to management. Other businesses, however, are reluctant to authorize these statistical reports. According to a major study of business complaint-handling practices entitled "Complaint Handling in America: A Final Report," (conducted by the Technical Assistance Research Program (TARP) of Washington, D.C. under contract from HEW), some businesses fear that reports on complaints would 1) involve expensive data collection, 2) invite regulatory or legal action, and/or 3) antagonize zone or branch managers. The study cites several reasons why, in most instances, these objections are not valid:

- ☐ The expense objection is based on the mistaken assumption that statistical reports must include data on every complaint received. Much important data can be derived by using sampling techniques which can reduce reporting costs significantly.
- ☐ The value of using statistical reports to identify the root causes of customer problems far outweighs the risk that these reports will be used against the company in regulatory proceedings or private legal actions. More serious legal problems result when businesses fail to correct the causes of significant customer problems. Many companies have found that expeditious settlement of complaints discourages future litigation.
- ☐ If the need for complaint-related statistical reports is adequately justified, zone or branch managers are less likely to be antagonized when these reports are requested by headquarters.

Fair Catch: a fair in-house complaint program helps you to hold on to your customers.

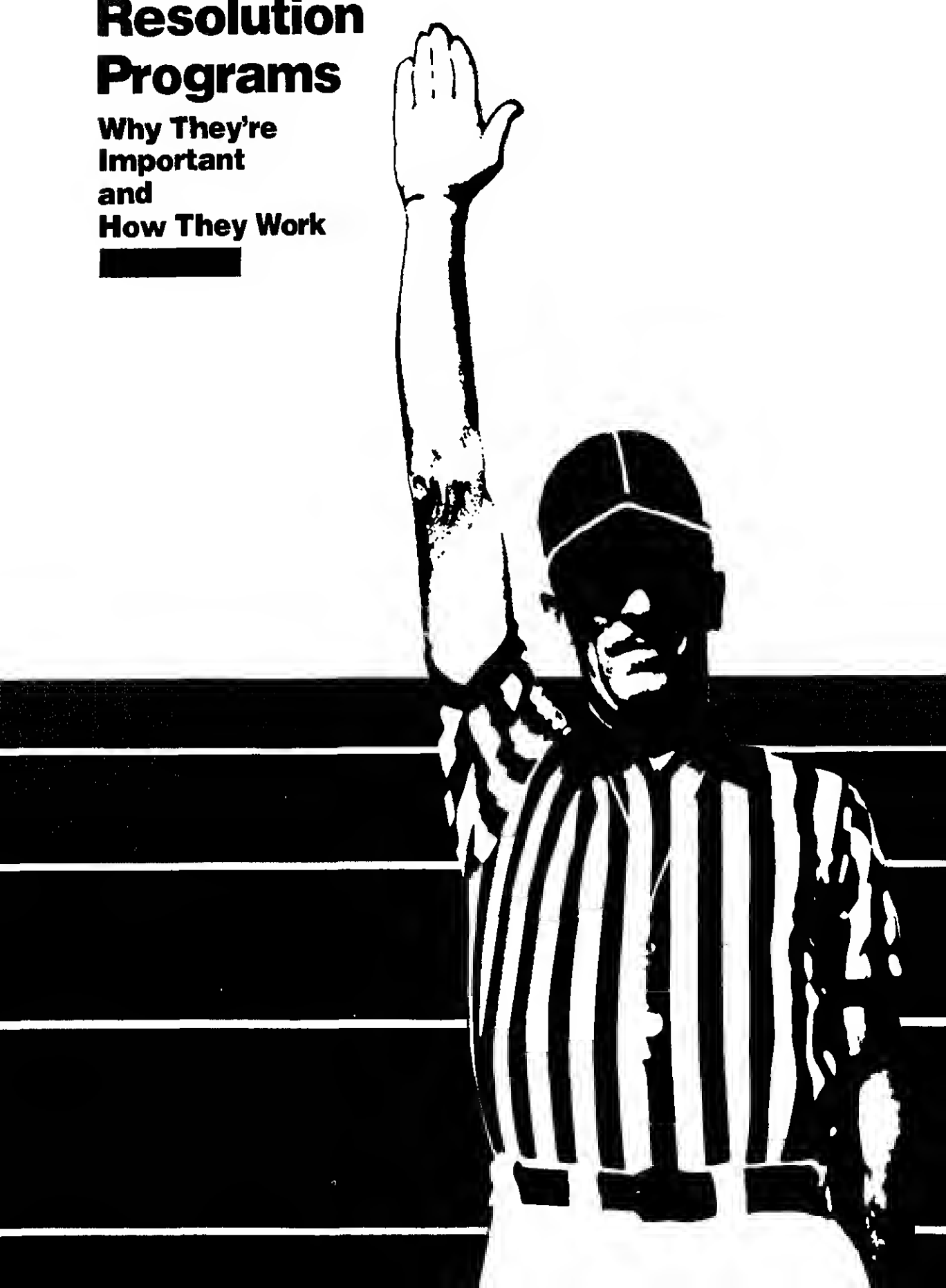
Small businesses may view any kind of statistical analysis of complaints as impractical. As an alternative, they can periodically review their complaints. Even this less detailed analysis can point out important problem areas or business trends.

In addition to analyzing past complaints, businesses can periodically survey customers and employees about their perceptions and understanding of the dispute resolution program, their expectations when dealing with each other and with the program, their satisfaction with the program, and their suggestions for changes.

A good in-house program should be able to handle the bulk of customer complaints. If you wish to know more about in-house complaint-handling procedures you can consult the bibliography found in Appendix B. The rest of this manual concentrates on third-party complaint-handling programs. We see these programs as an important backup feature to help businesses resolve particularly troublesome problems.

Resolution Programs

Why They're Important and How They Work



Third-party dispute resolution involves the services of an independent person or persons to assist in resolving disputes. These procedures can provide an impartial, low-cost, expeditious method of settling disputes which, if left unresolved, could result in loss of customer patronage or in court action.

We recommend that businesses initially attempt to resolve customer complaints through their in-house complaint-handling procedures. *No matter how well an in-house complaint-handling program works, however, there are good reasons to consider supplementing an in-house program with a third-party review procedure:*

Impartiality
In some instances, the impartiality of an independent party may be necessary to resolve particularly intractable disputes.

Customer Confidence
This two-step approach to complaint-handling builds customer confidence. Customers see that the business is willing to let a disinterested third party review its decisions.

Employee Complaint-Handling Performance
Businesses using third-party programs find their in-house complaint-handling programs are more responsive to customer problems because employees realize a third party may review their decisions.

Less Litigation
Business experience shows that litigation declines in instances where third-party programs are available.

Improved Relations with Consumer Offices
State and local consumer protection offices have indicated a willingness to refer customer complaints to third-party programs which they've recognized as independent and effective.

The Basic Techniques

Most public and private third-party programs use one or more of the following well-established dispute resolution techniques:

Conciliation
An independent person brings the parties together and encourages a mutually acceptable resolution of the dispute. The conciliator normally does not become actively involved in negotiations or make recommendations regarding a settlement.

Mediation
A mediator is similar to a conciliator but may play a more structured and active role. The mediator acts as an intermediary, conveying each party's views to the other, in an attempt to arrive at a mutually acceptable resolution. A mediator may propose terms to settle a dispute but does not have the power to dictate a settlement.

Arbitration
An independent person or panel reviews the facts on both sides of the dispute and renders a final decision by which both parties previously have agreed to abide. There are also a number of experimental third-party programs testing *one-way binding arbitration*, where the business — but not the customer — is bound by the arbitrator's decisions.

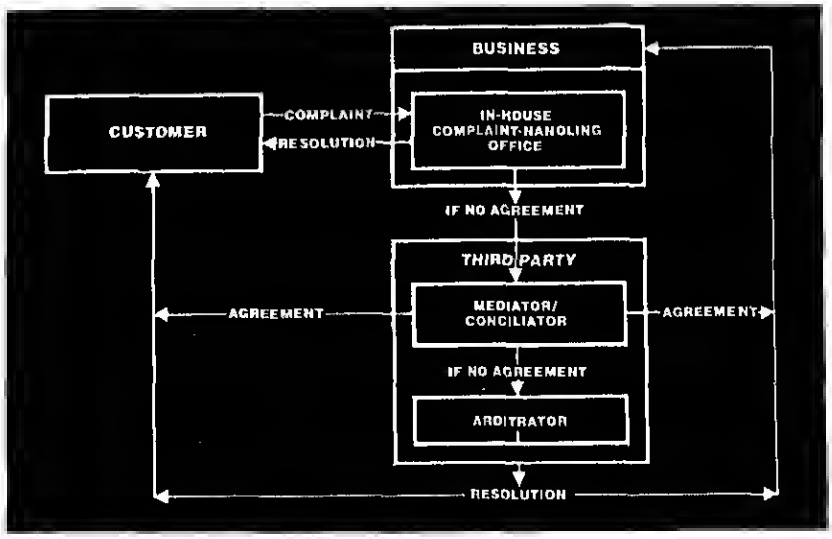
The chart at the bottom of the page shows the flow of complaints from the business' in-house program through a third-party dispute resolution process.

An Overview of Current Third-Party Approaches

Including Some Cost-Benefit Considerations

Third-party programs in the consumer-merchant field take a variety of forms, ranging from traditional mediation and arbitration forums to consumer-industry arbitration panels which render decisions binding only on the business. Some are run by the businesses themselves, others by public or private, independent organizations specializing in dispute resolution services. Many are at an experimental stage, while others are well-established.

To familiarize you with the range of current programs, we'll review the basic types and provide examples from the business community. *(The following discussion is not meant as an FTC endorsement of any of the programs mentioned.)* We'll also suggest some cost-benefit considerations to keep in mind. We aren't suggesting you adopt any of the programs described in a wholesale fashion. Rather we recommend you select the third-party approach which best suits your particular needs and those of your customers. To do this, use the step-by-step guide found in the section on identifying



Referee: an independent person who listens to both sides and renders a final decision.

the essentials of a third-party program.

Independent programs available to all businesses

Most businesses using third-party programs subscribe to an independent organization offering conciliation/mediatinn and/or arbitration services. A major benefit of this approach is the credibility such an organization lends to the dispute resolution process.

The Better Business Bureau and the American Arbitration Association, as well as a growing number of state and local government consumer affairs offices and citizen-based groups offer conciliation, mediation and/or arbitration services. They will accept disputes from any business, either on a case-by-case basis or through a pre-commitment agreement by which a business agrees to submit all unresolved custnmer complaints to the third-party process.

These programs are generally widely available. Many offer their services at no or low cost to the business, while all are free to the customer. Thousands of small businesses across the country use these programs to review unresolved customer cnmplaints and thus avoid the expense of establishing their own third-party programs.

Annther advantage in subscribing to these programs is that the costs of advertising the service are generally borne by the third-party nrganization. Sometimes though, the advertising is limited and may nnt identify businesses by name. Many nf these programs do offer participating businesses the option of displaying an "arbitratinn lngo", thus setting them apart from nnn-participating competitors.

The Better Business Bureau (BBB) has long been active in mediating consumer-merchant disputes and in the early 1970s began an active arbitratinn program in this area. Mediation and arbitration services are offered at over 100 BBB offices around the country. Funding for the programs comes from business membership dues. Some offices offer these services to both members and non-members. Arbitrators are drawn from a volunteer pool composed of a cross section of the community. Arbitrators usually can call on volunteer experts for consultation and inspection.

The 54-year-old American Arbitratinn Assnciatinn (AAA) is the oldest private, nnnprofit arbitration organization in the country, with offices nationwide. Traditionally, the AAA has been involved primarily in commercial and labor-management arbitration. During the early 1970s the AAA expanded into the consumer-merchant area and continues tn provide arbitration services in this area for a fee. The AAA is willing to work out special fee schedules in snme cases, althnugh it generally charges ahout $150 to $200 per case. Two of the major attractions of the AAA's program are its established reputation and the fact that its arbitrators are usually experts in the suhject matter of the dispute.

The 1970s also spawned a number of publicly sponsored third-party programs which offer free services to both businesses a customers. Mediation and co iatinn services are available thr nearly all local and state cnnsu prntection offices. While arbitra services are not as widespread number of cnnsumer affairs of offering arbitration is growing list of consumer affairs offic offering arbitration programs be fnnnd in Appendix F.] Citi based organizations such as l schnnl assistance centers and sumer organizatinns are additi sources of free mediation and ciliatinn services. A major ad tage of these publicly-sponso programs is their lack of busi affiliations, which tends to enh the program's credibility in t eyes of the public.

The tailored approach

Many of the organizations w mentioned are also willing to t a third-party dispute resoluti program for a particular busi If your business sees a compet value in marketing your own pute resolution program, but s the credibility and expertise comes from affiliation with a dependent third party, consi this approach.

A tailored program can be ly expensive when you call n services of the American Arbitr Association or the BBB. Both ganizations, however, are exp ienced and can adapt their ser tn your needs. As mentioned fore, the AAA's arbitration fee between $150 tn $200 per c unless special arrangements be made. The BBB's arbitrati fees for individualized progr run somewhat less but proba still will be $70 or more per Mediation costs can run cons ably less. The only additiona is advertising your program.

The General Motors pilot party prngrams provide an exa of the tailored approach. The prnvides mediation nnd, wh necessary, arbitration service customer complaints which resolved through GM's in-ho complaint-handling proced

Two of the pilot programs bind only the company, while the remaining three bind both sides. GM handles the advertising costs for all its programs.

If you're looking for less expensive tailored programs, talk to your local or state consumer affairs office. A growing number have indicated an interest in providing this type of service free or at minimal cost to businesses. It's also likely you'll benefit from a certain amount of free promotion through public service announcements and the like.

The industry-wide approach

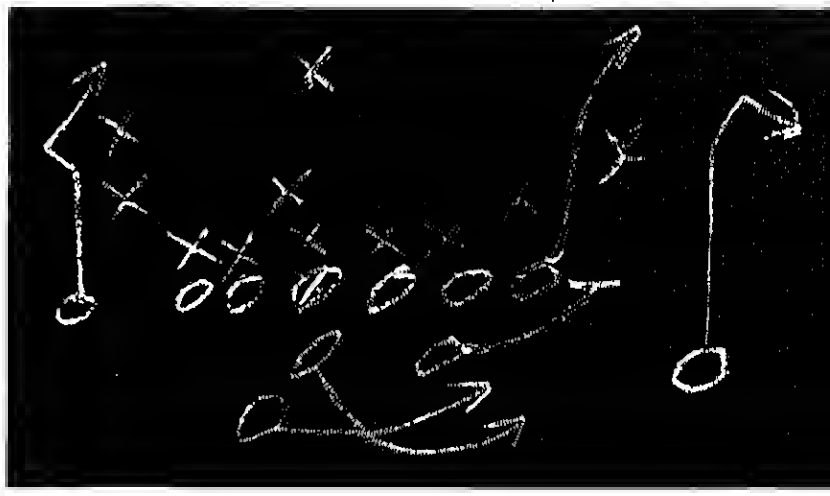
A number of businesses subscribe to programs which handle customer complaints for a particular industry. Such shared arrangements may not offer any one business a competitive edge. *But industry-wide programs can offer clear economic benefits because all operating expenses are shared by a broad membership.* A group of subscribers, for example, can buy the expert services of an independent dispute resolution organization, while this might prove prohibitively expensive for any individual subscriber. Moreover, the presence of an independent dispute resolution organization increases the credibility of the program. An additional benefit of the industry-wide approach is the opportunity to participate-in-industry-wide advertising campaigns.

One example is Project Autoline, which was set up by eleven domestic and foreign automobile manufacturers in 1979 and currently operates in three cities. Project Autoline places great emphasis on telephone mediation with binding arbitration as a final resort. The program is administered by the BBB and funded by the participating businesses.

The nationwide Home Owners Warranty Program (HOW), which was established by the National Association of Homebuilders in 1974 and is available to member builders, administers its own conciliation program. Unresolved complaints are referred to the American Arbitration Association, whose decisions are binding only on the builder. The HOW program is the only program that has officially adopted the FTC's Rule on Informal Dispute Settlement. The HOW program now covers over 600,000 homes in 49 states.

A third example of the industry-wide approach is consumer action panels, such as the Major Appliance Consumer Action Panel (MACAP), the Furniture Industry Consumer Action Panel (FICAP), and the Automotive Consumer Action Panels (AutoCAP). All of these panels, established in 1973, operate on a nationwide basis and are appointed and administered by industry trade associations. MACAP and FICAP offer mediation by the trade association staff. If necessary, the panel members issue an advisory settlement opinion which is not binding. AutoCAP, administered by an association of domestic automobile dealers, also offers mediation by the trade association staff. Improved procedures were developed recently for AutoCAP panels, providing among other things that panel decisions are binding on the automobile dealers but not customers.

The American Automobile Association (AAA) administers an industry-wide program with a somewhat unique flavor. A consumer membership organization, the AAA identifies, through prominently displayed logos, local auto repair shops whose high quality facilities are approved for its members. Local auto repair shops may apply for membership and, if accepted, must agree to comply with the program's rules, including submitting all customer disputes to one-way binding, third-party arbitration. An AAA-designated automotive expert mediates and, if necessary, arbitrates any repair disputes which arise. AAA operates this program in 13 states with over 650 repair facilities participating in the program.



Game Plan: The strategy of some businesses is to use public programs to increase credibility with customers.

Programs administered by the business

Any firm large enough to have a regional or national network of offices may find it economical to administer its own third-party program. As long as the program is viewed as fair and objective, it should be able to recruit qualified volunteer panel members from a number of sources, including educational institutions and consumer affairs offices. The company can supply administrative and support staff and office space, thus minimizing program costs.

Advertising costs for individually-run programs may be high, especially at the outset when customers aren't familiar with the services being offered. Later, pro-

gram advertising can be dovetailed with the business' regular advertising. While there may be a competitive advantage in offering a company-run program, this may he offset by the possibility of reduced credibility in the eyes of those who question the impartiality of a third-party program operated and funded by business.

To date, the only third-party programs administered by businesses are the ones operated hy Ford Motor Company and Chrysler Corporation. These programs are still in the experimental stage and are geographically limited. Ford operates seven programs availablc to twenty-five percent of domestic Ford owners. Chrysler currently operates twenty programs. Both programs are free to the customer.

Ford has established "appeals boards", which review those customer complaints that cannot be resolved through the company's in-house procedures. The boards are appointed hy the company and each consists of two Ford dealer representatives and three consumer representatives. Decisions are by majority vote and are binding on Ford and its dealers but are not binding on the customer.

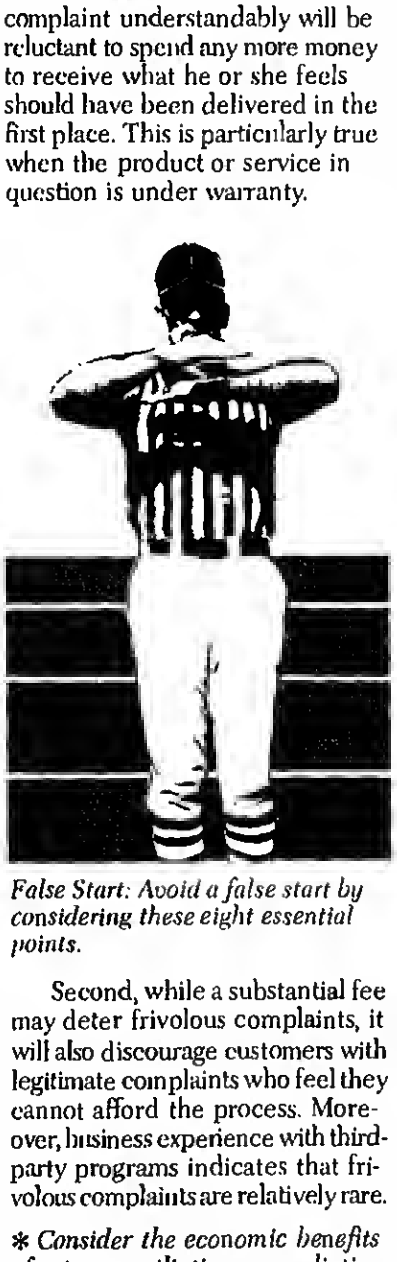
Chrysler's program, whilc encouraging the dealer and the customer to resolve complaints in-house, does not require a customer to go through in-house procedures before taking a complaint to its "Customer Satisfaction Board." The program is patterned after the FTC's Rule on Informal Dispute Settlement, although Chrysler has not officially adopted the rule by ineluding notice of its program in its written warranty. Chrysler's boards are similar in makeup to Ford's, but only the consumer representatives vote. Board decisions are biinding only on Chrysler and its dealers.

Further cost considerations

Whether you are thinking of setting up your own program or subscribing to exisiting third-party services, there are two general cost considerations to keep in mind:

* *Most organizations and businesses administering dispute resolution programs offer their services at no cost to the customer.* Therc are a number of reasons for following this praetice:

A eustomer with an unresolved complaint understandably will be reluctant to spend any more money to receive what he or she feels should have been delivered in the first place. This is particularly true when the product or service in question is under warranty.



False Start: Avoid a false start by considering these eight essential points.

Second, while a substantial fee may deter frivolous complaints, it will also discourage customers with legitimate complaints who feel they cannot afford the process. Moreover, business experience with third-party programs indicates that frivolous complaints are relatively rare.

* *Consider the economic benefits of using conciliation or mediation before resorting to arbitration. More* than half of all unresolved disputes are settled by eonciliation or mediation, and the simplicity of these procedures minimizes the administrative costs. The BBB, for example, reports that the estimated cost of mediating a dispute is $15.

Identifying the Essentials of a Third-Party Program

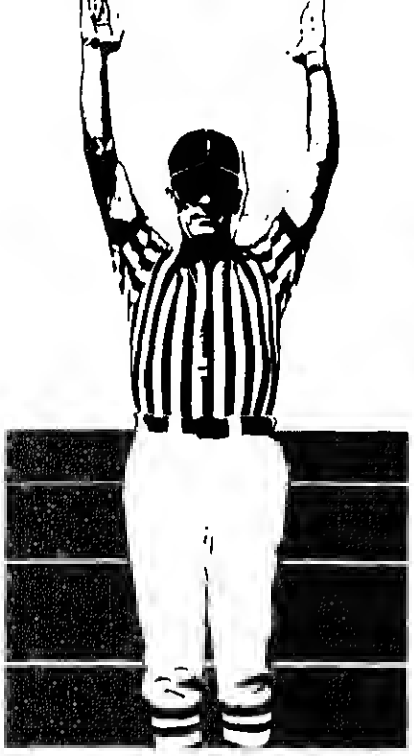
While third-party programs com in many different forms, successfu programs have certain elements i common. We have identified th following eight essential points as guide to third-party programs Whether you design your own pro gram or subscribe to an existin program, we recommend consid ering each of the following point

* Mediation/conciliation as a effective first step.
* Arbitration as a final decision making step.
* Selection of a credible and com petent third party.
* Selection of fair arbitration pro cedures.
* Promotion of customer aware ness and use of the program.
* Enforcement of agreements o decisions by the third party.
* Measures to ensure promptnes
* Follow-up and recordkeeping t maintain effectiveness.

Mediation/ Conciliation as an Effective First Step

Using mediation or conciliation before submitting a dispute to fin decision-making can work to mak dispute resolution faster, more efficient and more satisfactory fo everyone involved.

Because formal procedures ar kept to a minimum, mediation/co ciliation is an expeditious and inexpensive process. The mediato conciliator has no formal authori to impose a decision; any resolu tion is based solely on the partie agreement. This creates little nee for restrictive legal safeguards o lawyers. Parties can deal directl with each other in an unencum



Successful try: customers are more satisfied with the outcome when given some control of the ball.

bered manner. Mediation/conciliation can be scheduled at the parties' convenience to minimize lost wages and aggravating waits. Significantly, one industry-wide program has found that mediation/conciliation takes only one-third as much administrative time as arbitration, to say nothing of the time saved by the parties themselves.

Furthermore, the vast majority of claims can be resolved during mediation/conciliation. For instance, one recently-established, industry-wide program experiences a 90 percent settlement rate at the mediation/conciliation stage. Even if the mediation/conciliation effort is unsuccessful, it helps the parties narrow the issues, which in turn speeds the arbitration process.

In contrast to arbitration, where there is an imposed settlement, mediation/conciliation allows the parties themselves to agree on the result. Not surprisingly, the participants tend to be more satisfied with an outcome they helped shape. Experience has shown that the overall level of satisfaction for mediation/conciliation agreements is usually much higher than for arbitration decisions. Furthermore, by the parties, it is much more likely to be followed.

Mediation/conciliation by phone

Mediation or conciliation by phone may be the quickest and least time-consuming option. The use of an "800" telephone number makes it economical to serve a wide geographical area from a single location. A few well-trained mediators/conciliators can handle a high volume of complaints in a short period of time. A single, competent administrative assistant can manage support tasks such as phone inquiries, recordkeeping, and follow-up calls or letters.

In-person mediation/conciliation

Despite the cost advantages of telephone mediation/conciliation, in many cases in-person mediation/conciliation may be more effective. Many people simply communicate better in-person, and often both sides are more receptive if they find themselves face to face with one another. Eliminating the option of a personal conference may inadvertently channel some complaints to the more costly arbitration stage.

The need for in-person mediation/conciliation becomes particularly important when complaints call for inspection of products or work performed. In one industry-wide program where the majority of disputes deal with the quality of home construction and repairs, the conciliation hearing routinely is conducted at the customer's house.

Arbitration: Reaching a Final Decision

This brings us to the final stage in a third-party program — arbitration. There are several compelling reasons for including arbitration as part of a third-party dispute resolution program. First, not all complaints can be resolved through mediation/conciliation. Second, customers may be more willing to participate in a dispute resolution program if they know they can obtain a final decision through arbitration if mediation or conciliation is unsuccessful. Finally, merely offering the option of arbitration is likely to induce the parties to reach an agreement between themselves and thereby maximize the number of cases settled through mediation/conciliation.

There are two important decisions to make with regard to the arbitration process. First, there is the question of whether to use a binding or a one-way binding arbitration process and second, whether to precommit your business to arbitrate customer complaints that cannot be resolved in-house.

Binding vs. one-way binding arbitration

Traditionally, the arbitration process has been binding on both parties. However, an increasing number of businesses are experimenting with arbitration which is binding only on the business.

Although binding arbitration offers a strong guarantee of finality, many businesses find that the same degree of finality is achieved by agreeing to bind themselves, but not their customers, to the arbitrator's award. According to current evidence, the appeal rate by customers in these one-way binding systems appears to be the same as in binding systems.

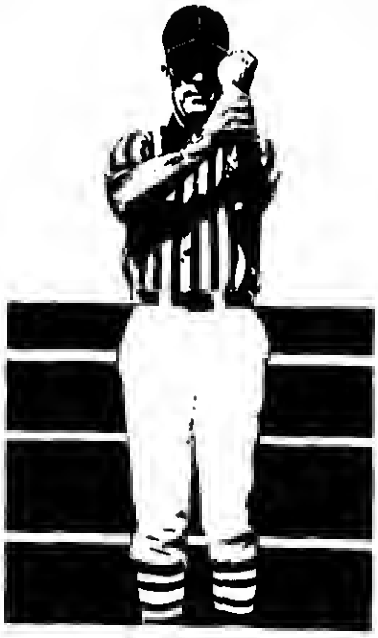
Businesses using one-way binding systems have found that this approach can lend considerable credibility to both the resolution process and the business itself. In agreeing to bind itself, but not the customer, the business is informing the public that it places a great deal of faith in the fairness of the program decisions. This in turn leads the customer to believe that a fair hearing will follow.

The more closely allied a dis-

sponsoring business, the more customers are apt to be wary of potential bias in the decision-making process. This can lead to customer reluctance to use the program. Cnnsequently, if a business plans to administer its nwn program, or use a program sponsored by a trade association or other business-suppnrted organization, we suggest that it seriously consider the valne of a nne-way binding approach as a means of huilding customer confidence. Although a binding system administered by a tntally independent dispute resolution service would prnbably appear fair to most customers, businesses using these services may still wish tn consider a one-way binding approach — given the low rate of appeal — to maximize customer confidence in the program.

Precommitment of businesses to arbitration

An excellent way to convince customers that a business is committed to fair and final resolution of all customer complaints is to assure uniform access to an arbitration program. A business can do this by precommitting itself to using the program whenever a complaint can't be resolved throngh its in-house system. While your business may make use of a third-party program only nn a seleeted basis, it is preferable to let customers know that you are committed to mediation/cnneiliatinn and arbitration whatever the circnmstances. It indicates ynur company is serious about resolving *all* complaints brought before you. Over 20,000 businesses have chosen this nption, precomitting themselves to arbitrate all unresolvable disputes under the BBB arbitration program.



Holding: businesses should hold themselves to all arbitration decisions.

A business can precommit itself hy promising in its sales contract to submit all unresolved complaints to arbitration and to abide by all arbitration awards. Alternatively, this obligation can be stated in an agreement between the business and the third-party organization administering the arbitration process. Information on a company's precommitment policy can be given to customers either at the point of sale or when a dispute arises.

Note: Arbitration is a serious last step in the complaint resolution process and must be handled carefully. The parties should know that submitting disputes to *binding* arbitration means:

* Both parties give up their right to sue or defend themselves in court.
* Arbitrators are not required to base their decisinnsnn legal precedent and existing laws.
* In most jurisdictions, the decision of the arhitrator can be enforced in court.
* The arhitration decision itself can be appealed nnly under limited circumstances, such as when an award is nbtained by fraud, when bias on the part of the arbitratnr is demonstrated, or when an arbitrator has exceeded his or her powers.

Although we suggest that businesses precommit themselves to arbitrate future disputes with customers, it does not follow that customers shonld be precommitted. Before establishing or participating in a dispute resolution program which includes binding arbitration, a company will naturally consider fully the legal implications of arbitration and the difference between an arbitratinn hearing and a court case. On the nther hand, it is far less likely that customers, at the point of purchase, will focus on the legal consequences of binding arbitration.

A customer's ignnrance of the legal effect of binding arbitration may be fatal to the arbitration agreement. In order for courts to uphold arbitration awards, customers must have made a knowing waiver of their right to trial. If there's any question about an individual's waiver, the precommitment agreement may be vulnerable to challenge as an infringement of the customer's due process rights.

Therefore, we suggest that if you adopt a binding arbitration program, you offer customers the choice of binding arbitration only after a dispute has arisen. This is the point at which customers are in a position to consider the legal ramifications of selecting binding arbitration. When fully advised of the advantages of arbitration, most customers will probably elect tn take part in the process. Nevertheless, there may be instances when custnmers decline binding arbitration to preserve their right to sue in court. In any event, it is questionable whether customers should be required to forego their basic right to settle disputes in court as a cost of dning business with a company.

If you dn adopt a binding arbitration program, custnmers should receive a written disclosure of the legal consequences nf selecting arbitration (noted above) and a full explanation of the arbitration process before they agree to participate. Additionally, custnmers should be informed nf the legal alternatives, such as small claims court, which they will forego in choosing binding arbitration.

Selecting a Credible and Competent Third Party

The mediator/conciliator

Successful use of a third party ultimately depends on the independence of the mediator, conciliator, or arbitrator. If you are administering your own program, avoid using your own employees as mediators/conciliators, if at all possible. However, if you choose to designate employees as mediators/conciliators, they should not be used in instances where they were previously involved in the dispute. You should also avoid selecting employees with duties that might inhibit their ability to serve as a disinterested party.

Differing roles for the mediator/conciliator and the arbitrator

Conciliation/mediation and arbitration are different — both in theory and in practice. The individual who attempts to fill both roles may compromise the fairness and effectiveness of both.

In mediation, where accommodation is the goal, both sides must be frank in identifying areas open to compromise. The mediator/conciliator acts as a facilitator of discussion and negotiation between the parties. During arbitration, however, both sides assume adversarial roles and attempt to persuade the arbitrator that they are right. The parties aren't likely to come forward with compromise proposals if they believe the mediator/conciliator will later serve as arbitrator and possibly hold this information against them. There is the risk the mediator/conciliator may harbor a lingering partiality toward the party who showed the greatest willingness to compromise during mediation/conciliation — an attitude which has nothing to do with a determination as to whether the party is right. Additionally, it is important that the arbitrator assume a disinterested attitude toward the case; but this may be hard once that person, as mediator/conciliator, has expressed strong views concerning a reasonable settlement. A good mediator/conciliator will often suggest avenues for compromise, while a good arbitrator must remain neutral and cannot participate in settlement negotiations. Finally, persons who perform both roles and are affiliated with one of the

Encroachment: try to separate the mediator's and the arbitrator's roles.

parties, would be in a good position to subtly exercise bias in the process. For these reasons, it is desirable to have different people conduct the mediation/conciliation and the arbitration phases. If the roles are combined, however, fairness suggests that the third party be completely independent of the business and that he or she receive extensive training in methods which minimize the hazards of performing these diverse roles.

Provide adequate training

Given the dynamic role a mediator/conciliator plays, training is essential. Involvement with the parties must be tempered with objectivity to assure that the mediator/conciliator is understanding, yet independent.

The Federal Mediation and Conciliation Service, with regional offices in several parts of the country, offers training sessions to both public and private groups. For more information, contact the Service at 2100 K St., NW, Washington, D.C. 20427, (202) 653-5240. The American Arbitration Association also offers mediation and arbitration training courses at its offices in New York, Chicago, and Los Angeles. If you're interested, contact the AAA at 140 West 51st Street, New York, N.Y. 10020, (212) 484-4000.

The arbitrator

There are three basic types of arbitrators currently used in consumer-merchant arbitration: the selected arbitrator, the appointed panel, and the appointed expert.

The selected arbitrator(s)

Under the traditional arbitration approach, used by the BBB, the American Arbitration Association, and most state and local dispute resolution programs, the customer and the business select the arbitrator(s). Each party is given a list of arbitrators drawn from a volunteer pool, with biographical data on each, and asked to order the names by preference. If they are unable to agree on a mutually acceptable arbitrator, each party selects one individual, and those two select a third to form an arbitration panel. The arbitrator's decision is based on an oral hearing at which both parties present their cases.

Some sponsoring organizations prefer to have the parties make their selections from a pool of arbitrators with expertise in the area of the dispute. Others maintain a pool of arbitrators with diverse backgrounds, including businesspeople, retirees, professionals, and homemakers. In most cases a separate pool of volunteer experts recruited from non-industry sources is available to assist the non-expert arbitrator with technical questions.

Parties are likely to view an arbitrator they've chosen themselves as highly credible. *However, the value of being able to select the arbitrator depends to a great extent*

on the credibility of the pool. If a broad-based pool is used, it is important to have balanced representation. For example, too many businesspeople in a pool may frighten off customers and subject the program to criticism of bias, particularly in a business-sponsored program. Too many attorneys, on the other hand, might discourage those who are wary of a court-like, formal hearing. Programs which use an expert pool should draw as many experts as possible from non-industry sources to help insure their independence.

One footnote: a potential danger of the selected arbitrator approach is that parties who use the program frequently may be able to predict which arbitrators are likely to rule in their favor. To discourage this, the administering organization should make its pool as large as feasible and rotate arbitrators to reduce the chances of the same individual being selected by a specific party more than once.

The appointed arbitration panel

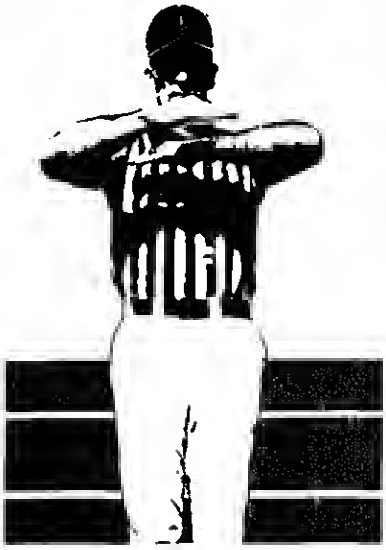
Under the second approach, the administering organization appoints an arbitration panel which decides all cases that reach the arbitration stage. Under current programs, panels consist of non-industry experts, consumers, and industry representatives who volunteer their services. Panels meet periodically, usually once a month, to rule on customer complaints based on written submissions from both parties.

The panel approach has several advantages. Panels which include expert as well as non-expert members are likely to make decisions that are both fair and technically well-founded. Decisions are also likely to be more reliable when reached by more than one decision-maker.

To operate a panel as well in practice as in theory, consider these factors:

* As with a selected arbitrator, panel members should be objective and independent. To help insure their independence, panel members should be given complete autonomy in reviewing and deciding cases.

* We suggest that in panels consisting of both industry and consumer representatives, a majority be consumers. In particular, it would



Illegal Formation: establish a panel with balanced team membership.

be desirable if one of the consumer representatives is a technical expert who has no association — formal or otherwise — with the business, and is willing to lend a balance to the observations and conclusions made by industry representatives on the panel. We also suggest selecting the remaining consumer representatives from local groups or public agencies which are likely to have the confidence and trust of customers.

* Businesses that have used industry/consumer panels feel that industry representatives provide valuable input into the decision-making process because of their practical experience and technical knowledge. As an alternative to the usual industry/consumer panel makeup, using an all-consumer panel (one of whom would be a technical expert) can lend added credibility.

* The credibility that stems from careful panel selection can be heightened by publicizing the panel members' credentials. Consider including their professional background and affiliations in your advertising. Particularly in programs where decisions are based solely on written submissions, this kind of visibility helps customers gain confidence in the decision-makers.

* Most panels reach their decisions based on majority vote. An alternative being used by at least one company is allowing only the consumer representatives to vote. Although this alternative approach may not be necessary to create an appearance of fairness, it can help engender customer confidence in the program while preserving the technical and practical contribution of industry representatives.

The appointed expert

The third approach in consumer-merchant disputes is for the administering organization to appoint an arbitrator who is an expert in the subject matter of the dispute. There are two main advantages to this approach. First, many parties have greater confidence in an expert as arbitrator than in a layman, particularly in cases which involve technical questions. Second, when the administering organization rather than the parties themselves makes the selection, it eliminates the potential problem of a frequent participant being able to select a sympathetic arbitrator.

The success of the appointed expert approach depends greatly on whether the parties perceive the appointing organization and its arbitrator(s) as truly independent and credible. The American Automobile Association's Approved Auto Repair Program achieves this by making the arbitrator clearly accountable to both parties in the dispute. The AAA relies on a consumer-based membership, so if the expert arbitrator who is appointed to decide disputes between AAA members and AAA-approved repair facilities appears to be incom-

petent or biased in favor of repair shops, AAA membership will likely drop. On the other hand, if the arbitrator appears to favor the customer unjustly, repair facilities will withdraw from the AAA repair shop certification program.

Regardless of the arbitration approach chosen, the decision-makers can benefit from training in basic dispute resolution techniques. It's also useful for the arbitrator to know basic contract and consumer law.

Choosing Fair Arbitration Procedures

Up to this point we have considered several basic questions in designing or selecting a third-party dispute resolution program, including whether to choose a binding or one-way binding system and what type of decision-maker to use. Our next step is to address a number of procedural issues, the first of which is whether the program should base its decisions on written submissions or oral presentations.

Written submissions

A number of current programs — particularly those using arbitration panels — use a written submission format. Decisions are rendered on the basis of written statements submitted by the parties. In one industry-wide program for example, the panel receives the customer's complaint along with a complete service and repair record of the product and a statement from the dealer. After reviewing the file, the panel is free to ask the parties for additional information or to request an inspection of the product in question.

The written submissions approach has a number of advantages:

* Written submissions can usually be reviewed quickly.

* Numerous cases can be reviewed

Unsportsmanlike Conduct: choose fair arbitration procedures to avoid unsportsmanlike conduct.

* Parties don't have to take time from work or incur the expense of traveling long distances for a hearing.

* Written submissions are generally less expensive for the administering organization to process than oral presentations.

* Some customers prefer written submissions because they have an opportunity to review their presentations and make corrections or additions.

There are, however, a number of possible drawbacks to a written submissions format:

* Clearly this approach does not work as well for customers who are either poorly educated or don't speak English. In these cases, the sponsoring organization can conduct oral hearings, with an interpretor if necessary, or make arrangements with state and local consumer agencies, or assign its own administrative personnel to assist customers in drawing up their complaints.

* Programs that rely on written submissions are vulnerable to allegations that both sides weren't fairly presented. A summary of the case presented by a designated panel member or administrative staff runs the risk of not including all

wrong emphasis. A customer, after receiving notice of a negative decision, may suspect that the case was lost because the panel didn't receive or understand all the facts. For these reasons, such programs should not foreclose the option of allowing oral presentations in cases involving complex disputes or in other cases where oral presentations would enable the panel to better understand the case. Even if written submissions are relied upon exclusively, panel members should be able to submit questions to either party in order to clarify the areas of dispute.

* The written submissions format may be criticized if the parties do not have an opportunity to respond to each other's version of the dispute. One program has implemented procedures to address this problem. When contradictory information is submitted, the panel discloses this information and its source to both parties and offers them an opportunity to respond.

* If panel members are not given ample time to review the files before they meet, there's a danger that the panel member summarizing the case may exert a disproportionate influence on its outcome.

Oral presentations

The more traditional and prevalent approach to case review is oral presentation by the parties. After both sides explain their positions, they are free to call witnesses, to present supporting documents, and to cross-examine each other's witnesses. The arbitrator, generally through active questioning, assists the parties with their presentations and thereby assures that all relevant facts are presented.

Oral presentations are more credible than written submissions in the eyes of some customers. They are able to present their own cases and have an opportunity to question and confront the other party. After an oral hearing, most customers walk away feeling that

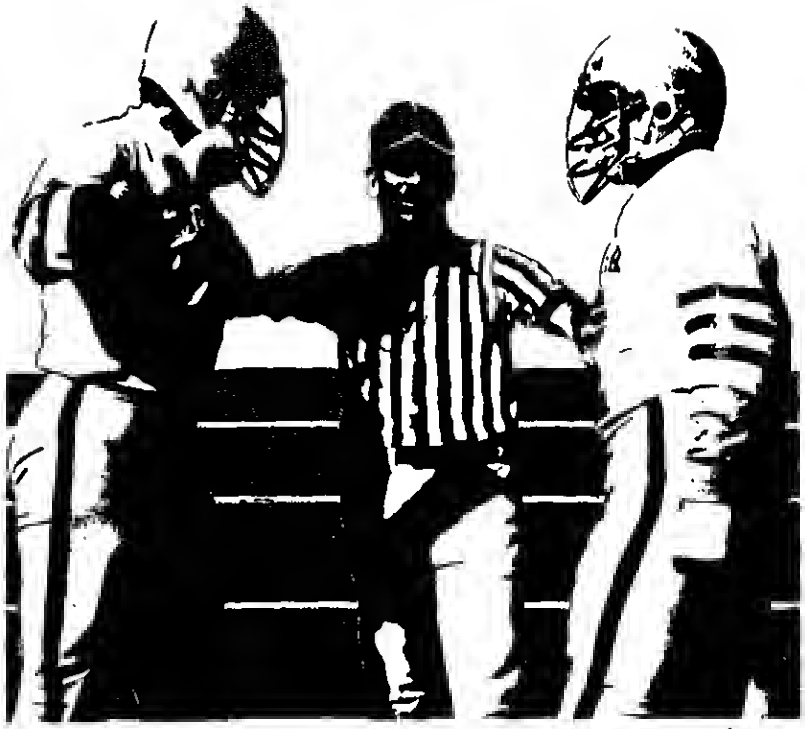
If you choose the oral presentation approach:

* Create a relaxed atmosphere, so that both sides are able to present arguments and evidence in an open manner.

* Maintain a balance between simple, straightforward procedures and formal safeguards. For example, while formal presentations shouldn't be required, the customer should be encouraged to say something more than, "It doesn't work." Instructing the customer to explain the situation as thoroughly as possible, without requiring that the problem be stated in technical language, is a good first step. Optimally, a staff person should be on hand to help customers organize their cases. Before the hearing, both parties should receive concise written instructions on making an oral presentation.

* Make the time of the hearing convenient. Evening and weekend hearing hours should be available.

* Don't dismiss the possibility of conducting oral hearings in scattered rural areas. This is sometimes difficult and expensive, but it can be done. One large firm with a statewide program uses innovative procedures such as hearings conducted by telephone conference calls and a pool of "circuit-riding" arbitrators who conduct hearings at locations convenient to the customer.



Oral Presentations are more credible than written submissions in the eyes of some customers.

Legal representation

The advisability of representation by counsel in oral hearings is a particularly difficult question. Having a lawyer present the case obviously offers advantages. At the same time, however, it can hamper the speed and informality of the dispute resolution process. Furthermore, allowing lawyers to be present often works against the customer, since businesses are better able to afford attorneys and are more apt to employ them. One solution is to permit legal representation for the business only if the customer has a lawyer, a policy adopted by several small claims courts. It's important to remember that if a program doesn't allow for representation by counsel, simplified procedures and an active and helpful arbitrator will be all the more necessary.

Representation by non-lawyers, on the other hand, is often desirable. Many customers aren't accustomed to speaking in public, and the assistance of a friend or relative as a spokesperson can be of great help. This possibility can be suggested to the customer at the time the complaint is filed.

While limiting legal representation in oral hearings places the parties on a more equal footing, an arbitrator must still be sensitive to the advantages enjoyed by a party who uses the forum frequently. An arbitrator can help achieve a balanced presentation by interjecting questions and eliciting information from both parties.

A background in warranty and contract law

It is important that consumer-merchant arbitration programs operate within the broad framework of contract, warranty, and consumer law. Traditionally, arbitrators have not rendered legal interpretations or followed strict legal precedents. Instead, they've based their decisions on notions of fairness and common sense. However, in many cases arbitrators will be called upon to interpret and apply warranty and contract provisions. They should, therefore, be aware of significant legal developments which define individual responsibilities and obligations in the warranty and consumer-merchant field. We strongly recommend that arbitrators receive training in contract, warranty, and consumer law so their decisions can be informed by a basic understanding of the relevant legal principles.

Scope of awards

It's important to allow third-party decision-makers adequate flexibility and discretion in fashioning awards, permitting them to tailor the remedy to suit the needs of the parties. A broad remedial policy also increases the likelihood that both parties will accept the decision and feel they've been treated fairly. Many of the third-party pro-

grams we reviewed have a wide range of remedies at their disposal, including repair of a defective product, extended warranties, refunds, and awards that divide the cost of the repair between the customer and warrantor.

In some programs, specific limitations have been placed on the size and scope of the award. For instance, many third-party programs prohibit the award of consequential or incidental damages. Whatever the arguments for excluding consequential damages, there are good reasons for allowing the award of incidental damages. Incidental damages are those incurred as a direct result of the disputed problem or failure and include such items as taxi fares, towing charges, and rental car fees Ineidental damages are of a definite and usually modest amount, and most customers would reasonably expect to be compensated for such items. By awarding ineidental damages, a company can go a long way toward offering customers complete satisfaction for relatively little additional money.

Where your program places limitations on awards, these limitations should be clearly stated from the outset in program materials and must be made in accordance with state law.

Public proceedings

Although arbitration hearings traditionally have been private proceedings, companies should give consideration to opening arbitration hearings or panel deliberations to the public. Consumer protection agencies and consumer organizations have expressed concern that private, third-party dispute resolution programs lack public accountability and therefore may be used as a means of hiding serious problems such as product defects and unlawful practices. A policy of opening third-party deliberations to the public addresses this concern and increases the likelihood that public and private consumer organizations will refer

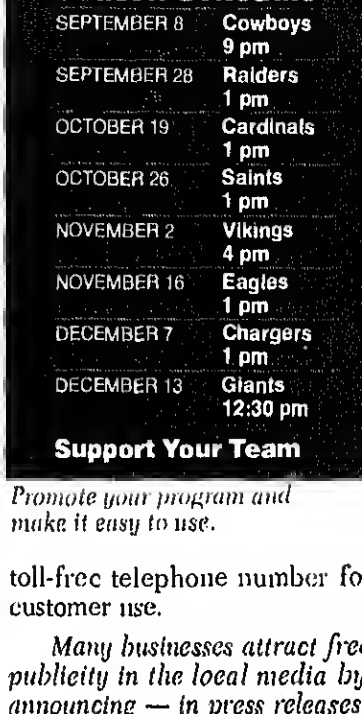
Promote Your Program and Make It Easy to Use

Even the best designed programs can't be effective unless the sponsoring organization advertises its services to the public and takes steps to make them easily available to customers.

One relatively inexpensive way to inform customers about a third-party program is to advertise it at your place of business. Brochures can be placed near cash registers or dealer service desks, along with eye-catching posters briefly explaining the purpose of the program and procedures for filing complaints. (Make sure all sales personnel and company employees who handle complaints are prepared to explain how the program works.) By publicizing your third-party program, you help inspire confidence in your internal procedures.

Inform the customer about your third-party program whenever it's clear that a complaint hasn't been handled to the customer's satisfaction at the in-house stage. One automobile company, for example, sends letters to all customers with unresolved complaints stating the company's position and suggesting use of its third-party program.

Relatively inexpensive advertising can be obtained through local shopping guides and handbills. Advertising in the mass media is naturally more expensive, but it can be a very effective way to attract new customers. See, for example, the Ford Appeals Board advertisement we've reprinted in Appendix C. These advertisements, appearing in major local newspapers and in regional editions of national magazines, explain the function of the company's program, the affiliations of the arbitrators, the types of complaints the program handles, and the procedures for submitting complaints for



Promote your program and make it easy to use.

toll-free telephone number fo customer use.

Many businesses attract fre publicity in the local media by announcing — in press releases at press conferences — new or expanded complaint-handling p grams. Periodic press releases o the number and types of cases be handled help attract ongoing coverage.

Make contact with public a private organizations that fre quently handle consumer com plaints. Familiarize them with yo program and request that they re customers to it. One state attorn general's office, for example, h agreed to refer all auto-relate complaints (except those involv fraud or misrepresentation) to local industry-wide program.

Even if customers know a p gram is available, they aren't ap use it unless procedures for fil complaints are straightforwar Experiment with the format of y complaint form until you're cert it's easy to follow. The form does need to request an exhaustive explanation of the problem if c tomers have the option of pre senting their cases at oral heari If, on the other hand, complai are resolved solely on the basis written submissions, you'll wan your complaint form to elicit a

Measures to Ensure Promptness

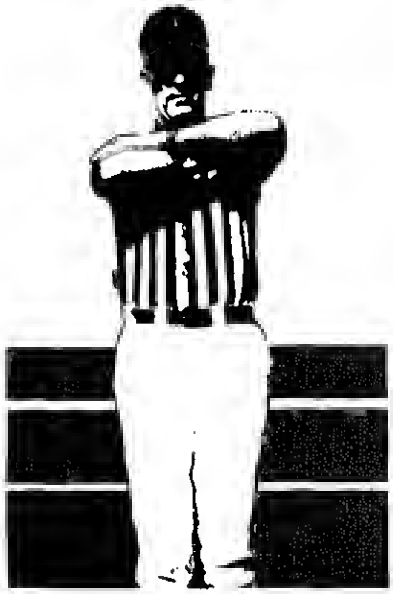
We wish to stress the importance of timely resolution of disputes in any third-party process. In most instances, both parties have already invested considerable time and effort going through the business' in-house complaint-handling process. Moreover, the customer has had to live with the problems that prompted the complaint. Your customers' assessment of your complaint-handling program will often depend in large part on how quickly it resolves disputes.

The most effective way to ensure promptness is to impose strict time limits on the process. A realistic time limit will be dictated by such factors as the basic design of the program, the complexity of the products or services involved, and the need for inspections or expert opinions. The time limit, in any case, should strike a reasonable balance between the parties' need for a speedy decision and the third party's need for sufficient time to reach a fair decision.

Strict time limits on administrative procedures, such as mailing out complaint forms, obtaining additional information, and announcing decisions, are also helpful. One program, for example, acknowledges receipt of a complaint within one working day and usually arrives at a decision within six days after the complaint is filed.

If disputes are decided by an arbitration panel on the basis of written submissions, panel meetings should be scheduled promptly. The meeting schedule should be flexible, allowing for additional meetings to handle any significant increases in the caseload. If frequent meetings are anticipated, it may be necessary to select alternate panel members to guarantee a quorum at each meeting.

If the program uses oral hearings, the pool of available arbitrators should be large enough to permit prompt scheduling of hearings. The program administrators should be sensitive to patterns that may emerge in the arbitration selection process, such as overuse of a particular arbitrator or category of arbitrators, which may cause scheduling delays. For example, if the parties consistently select attorneys as arbitrators, the arbitration pool may need additional attorneys.



Too Many Time Outs: don't be accused of delay of game—take measures to insure promptness.

Assuring a Final Result

Both parties to a complaint are seeking a *final* result. It is clearly costly, time-consuming, and frustrating to deal repeatedly with the same complaint. Moreover, if the dispute remains unresolved, the parties are less likely to emerge with the customer-business relationship intact.

Finality in any dispute resolution process depends upon the parties' acceptance of any resolution reached and the presence of backup mechanisms for assuring performance. An otherwise well-designed dispute resolution program may experience problems if there are no built-in limitations on "changes of heart." The discussion which follows suggests techniques for promoting finality according to the type of dispute resolution procedure used.

Finality in conciliation/mediation

Parties are likely to abide by an agreement reached through conciliation/mediation because it is one worked out by the parties themselves, along with the assistance of a disinterested third party. Nevertheless, the very informality of these procedures may result, in some instances, in one party or the other failing to conform to the agreement. This is more likely to be a problem when conciliation or mediation is conducted by phone, because the parties may come away with different interpretations of the agreement. *We recommend the following steps to help minimize non-performance in conciliation and mediation agreements:*

* At the outset and conclusion of the process, the conciliator/mediator should encourage both parties to view any agreement reached as final.

* At the end of the mediation/conciliation session, the third party should review the agreement to make certain everyone understands it. The agreement should be written down, and both parties should sign the document.

* Finally, the administering organization should conduct a follow-up check to substantiate — and if necessary "prod" — performance. Technically, any conciliation/mediation agreement is non-binding, but pressures can be brought to bear on non-performers in a number of ways. A manufacturer can establish a set of sanctions to be applied against any dealer who fails to comply with a negotiated settlement. Similarly, the administering organization can let it be known that it will suspend its services for any party refusing to abide by an agreement. A membership organization can expel any member refusing to comply with an agreement.

Touchdown: combined in-house and third party complaint-handling programs are a winning combination.

Finality in arbitration

It's rare that the parties don't comply with an arbitration award. But non-compliance can seriously jeopardize the credibility of the decision-making process. *These techniques can help to encourage voluntary performance:*

* An important procedure — but one which is often overlooked — is to explain the grounds for denying, in whole or part, a party's requested resolution. An unhappy customer has gone to considerable time and effort to submit a written, documented complaint and then participate in a review process. A terse, form-like response denying relief is frustrating and may result in dissatisfaction with the decision and distrust of the resolution process and its sponsoring organization. Nor should the business view an unexplained, unfavorable decision as something to be borne without question. After all, your commitment to the third-party program and your employees' positive attitude *one likes to lose, but someone who receives a brief but reasoned explanation of a negative decision is much more likely to accept the decision and be willing to use the program again.*

* Awards should specify a time for performance. The arbitrator can retain jurisdiction over the dispute long enough to determine whether the award is carried out.

It's likely that the parties will voluntarily abide by any award made. However, the existence of an enforcement mechanism not only assures performance when a party reneges but also acts as a powerful disincentive for non-performance from the beginning.

Here's a list of enforcement techniques which have worked in both binding and one-way binding arbitration programs.

* Manufacturers can honor an award if their dealers fail to take corrective action.

* On an industry-wide basis, program participants can pay "insurance" fees to cover performance of any awards.

* The arbitrator can draw upon escrow funds or performance bonds if a party fails to perform.

* The administering organization can set up its own sanctions, such as membership expulsion or denial of future services.

Binding arbitration programs have an additional enforcement handle available to them because, as discussed earlier, arbitration awards are enforceable as court judgments. Several BBB offices have been successful in using volunteer attorneys to enforce arbitration awards.

Follow-up and Recordkeeping

is necessary to evaluate the effectiveness of a program. Early feedback can quickly identify bottlenecks and lead the way to a more satisfactory process. And customer satisfaction checks are helpful throughout the life of the program, both to monitor the process and to demonstrate to customers that their reactions are important.

Follow-up doesn't have to involve elaborate recordkeeping. A simple questionnaire can be sent through the mail or a survey conducted by phone. In order to keep the data consistent, use a standard set of questions. Follow-up can be done on a periodic basis (e.g., every six months) or a random sample technique can be used (e.g., surveying every tenth participant). A sample questionnaire, a composite of many of the ones currently in use, is included in Appendix D.

Keeping records

Recordkeeping is an essential element of any third-party dispute resolution program. You can better monitor your program's performance, thereby ensuring fair and expeditious resolution of complaints, and you can provide information to customers and the public on the effectiveness of the program.

The first goal is best accomplished by using a complaint control log (see Appendix E) to track each complaint, the company's response, the length of the conciliation/mediation phase, and the date of the settlement. The log will enable administrators to quickly locate complaints in process, as well as to monitor the overall performance of the program.

Finally, information gathered from your program can be a useful public relations tool. Some programs disclose the number of complaints filed and the ways in which they were handled as a means of

Appendix A

A Shorthand Guide to Third-Party Programs

Regardless of how well your in-house complaint-handling procedures work, you may still want and need a disinterested third party to resolve particularly difficult problems.

Third-party programs rely on one or more of the following techniques:

Conciliation

A process in which an independent conciliator helps the two parties reach a voluntary, acceptable resolution of their dispute.

Mediation

A process similar to conciliation, but one in which the mediator plays a more active role, suggesting possible resolutions of the complaint.

Arbitration

A process in which an independent arbitrator reviews the facts of the dispute and renders a final decision by which both parties previously have agreed to abide. A number of programs are now employing a new approach — one-way binding arbitration — where only the business is bound by the arbitrator's decision.

These programs take a variety of forms, including:

Independent programs available to all businesses

The Better Business Bureau and the American Arbitration Association offer a complete range of dispute resolution services to all businesses. A growing number of local and state consumer affairs offices also provide these services. Most of these programs offer their services free to the customer and at little or no cost to the business.

Tailored programs

Many of these organizations will also design third-party programs to meet the specific needs of a business.

Industry-wide programs

A number of businesses in the same industry can pool their resources and subscribe to the services of a single, independent dispute resolution organization.

Business administered programs

Firms with a regional or national network of offices may find it economical to appoint independent panels and to administer their own third-party program.

When you are selecting or designing a third-party program, consider the following essential points:

Use mediation or conciliation as an effective first step.

Mediation/conciliation is inexpensive, fast, and effective. The typical cost is $15 per case. The vast majority of disputes can be resolved at this stage.

Telephone mediation/conciliation is generally faster and less expensive than in-person mediation/conciliation and can be used to reach customers living in a broad geographical area. Nevertheless, in-person mediation/conciliation is sometimes preferable, especially when inspection of products or work performance is necessary.

Use arbitration to resolve complaints that cannot be settled through mediation/conciliation.

Traditionally, arbitration decisions have been binding on both parties. However, a growing number of businesses are experimenting with arbitration that is binding only on the business. A one-way binding approach lends considerable credibility to the dispute resolution process — and to the business itself.

An excellent way to convince the public you are committed to a fair and final resolution of all complaints is to precommit your business to arbitrate any complaint that can't be resolved through your in-house system.

However, we suggest that customers should not be precommitted to binding arbitration because it is unlikely that they, at the point of purchase, are in a position to adequately consider the legal consequences of selecting this process.

If customers are asked to submit to binding arbitration, we suggest that the agreement take place only after the dispute arises and after the customer has been fully informed as to the consequenses of binding arbitration.

Select a credible and competent third party.

In selecting a mediator/conciliator, consider these three basic points:

* The mediator/conciliator should be independent and objective.
* It is generally not advisable to combine the mediator/conciliator and arbitrator roles.
* Training is essential to successful mediation/conciliation.

In selecting an arbitrator consider the three basic formats currently used:

Selected arbitrator

The parties choose an arbitrator from a pool of volunteers provided by the administering organization.

* If an expert pool is used, experts should be drawn from non-industry sources to ensure their independence.
* If a non-expert pool is used, the pool should consist of arbitrators with a range of backgrounds to ensure candidates acceptable to both parties.

Appointed panel

The administering organization appoints an arbitration panel. We suggest that the majority of the panel should be non-industry representatives selected from recommendations solicited from local consumer groups

or public agencies. One of the consumer or public representatives should be a technical expert.

Appointed expert

The administering organization appoints an arbitrator who is an expert in the subject matter of the dispute. The success of this format depends greatly on whether the parties perceive the appointing organization as independent and credible.

Choose fair arbitration procedures.

Two formats for case presentation are currently used — written submissions and oral presentations.

If the written submissions format is used, make note of the following suggestions:

* Provide assistance for non-English speaking or poorly educated customers.

* Allow panel members to review case files well in advance of panel meetings.

* Allow parties to respond to contrary assertions.

If cases are decided on the basis of oral presentations, consider these suggestions:

* Take care to make the procedures clear, understandable and informal.

* Remember that formal rules of evidence normally used in a court setting are relaxed and that the arbitrator serves as the sole judge of the relevancy of the evidence.

* Decide whether considerations of speed and informality make it advisable to prohibit or limit legal representation at the hearings.

* Allow representation by non-lawyers to assist customers who aren't accustomed to public speaking.

Consider training arbitrators in warranty and contract law. Traditionally arbitrators are not bound by precedent or statutes. They base their decisions on notions of fairness and common sense. Nonetheless, because they are interpreting warranty and contract provisions, it is important that arbitrators understand basic principles of consumer and contract law.

Arbitrators need flexibility in determining suitable awards. Most programs allow a variety of remedies such as specific repairs, replacement of defective products, extension of warranties and money awards. Consider giving arbitrators the discretion to include incidental damages in their awards.

Businesses should give consideration to opening third-party deliberations to the public. This addresses concerns that private third-party programs lack public accountability.

Promote your program and make it easy to use.

A third-party program can be advertised in stores, in local shopping guides and in the mass media. A well-publicized, toll-free telephone number will increase the use of the program. Customers appreciate programs that offer straightforward, easy-to-follow procedures for filing complaints.

Resolve complaints promptly.

Timely resolution of disputes is one of the central factors influencing customers' overall satisfaction with the program.

The most effective way to ensure promptness is to impose a strict time limit on the process. If the program relies on written submissions, panel meetings should be scheduled so the case load can be handled quickly and efficiently.

If the program uses oral hearings, the pool of available arbitrators should be large enough to permit prompt scheduling of hearings.

Implement measures to ensure a final result.

Since both parties are seeking a final result, procedures for encouraging and ensuring performance are important.

Conciliation/mediation promotes final resolutions, since the parties have reached a mutually acceptable agreement. Nevertheless, third-party programs can take these steps:

* Encourage both parties to view any agreement as final.

* Review the agreement with the parties to make certain they understand what they've agreed upon. Put the agreement in writing and ask them to sign the document.

Finality in arbitration can be encouraged by:

* Explaining the basis for the decision.

* Specifying a time for performance of the award.

Enforcement techniques that have worked in both binding and one-way binding arbitration programs include:

* The administering organization establishing its own sanctions, such as membership expulsion or denial of future services.

* Establishing escrow funds or requiring performance bonds which the arbitrator can draw upon if a party fails to perform.

Get feedback from your customers.

Follow-up and recordkeeping can identify bottlenecks in the system and demonstrate to customers that their reactions are important. Follow-up doesn't have to be elaborate. Mailed questionnaires or telephone surveys can be used. A document control log helps monitor each stage of the process. Finally, information gathered from your program can be used as an effective public relations tool.

Appendix B

Bibliography on In-House Business Complaint Handling

1. Blanding, Warren, and Harps, Leslie Hansen, *101 Ways to Improve Customer Service, a Manual for Manufacturers & Distributors*, Marketing Publications Inc. (Washington, D.C., 1976). A practical approach to customer service written from the point of view of manufacturers, distributors and wholesalers. The book discusses a wide range of customer service functions, including complaint-handling, communication procedures and a service manual containing useful forms and guidelines.

2. Blanding, Warren, Harps, Leslie Hansen, and Henry, William R. Jr., *133 Ways to Handle Customer Complaints*, Marketing Publications Inc. (Washington, D.C., 1979). A practical handbook for readers who handle "company-to-company" complaints or customer complaints on a daily basis. This book provides quick answers and recommends specific actions that businesses and organizations can use to effectively resolve customer problems and improve their customer relations.

3. Cron, Rodney L., *Assuring Customer Satisfaction: A Guide for Business and Industry*, Van Nostrand Reinhold Company (New York, 1974). A comprehensive survey of management approaches to complaint-handling and customer satisfaction. Specific guidelines are outlined with examples of complaint forms, checklists, organizational plans and various complaint-handling techniques.

4. French, Benjamin I. Jr., *Customer Service Manual — With Model Letters and Forms*, Prentice-Hall Inc., (Englewood Cliffs, New Jersey, 1976). This book discusses proven methods for managing customer service activities, including using personalized response letters as a sales tool, answering difficult customer complaints, handling recalls, streamlining and evaluating present customer service operations and compiling useful management reports. The "how-to" chapters, the 200 sample letters and personalized paragraphs and model complaint- and inquiry-processing forms are all written to help new and experienced companies make their customer service more cost-effective.

5. Habeeb, Virginia, *Complaint Handling, Your Guide For Turning Liabilities Into Assets*, Sperry and Hutchinson Company (Fort Worth, Texas, June 1979). This book offers guidelines on how to develop a well-organized complaint-handling system, including sample letters and forms, telephone and "face-to-face" complaint-handling, and techniques and suggestions for establishing company policy for complaint-handling responsibility.

6. Moseley, Lloyd W., *Customer Service, The Road to Greater Profits*, pp. 141-163, Lebhar-Friedman Books, Chain Store Publishing Corporation (New York, 1979). This guide discusses the importance of handling customer complaints effectively and describes step-by-step methods for handling mail, telephone or face-to-face complaints. The book includes samples of monthly complaint report forms, complaint and suggestion forms, complaint letters and replies, and answers to commonly asked questions.

7. Technical Assistance Research Program (TARP), *Consumer Complaint Handling In America: Final Report*, U.S. Office of Consumer Affairs (Washington, D.C., Contract No. HEW-05-74-292, September 1979). This report evaluates complaint-handling practices used by government, business and voluntary organizations and makes recommendations. Includes an extensive review of business complaint-handling procedures and provides a detailed how-to manual which offers step-by-step guidelines for implementing a cost-effective complaint-handling system.

Miscellaneous

1. Jones, Mary Gardiner, "The Consumer Affairs Office, Essential Element in Corporate Policy and Planning," *California Management Review*, Vol. XX, No. 4, (Summer 1978), pp. 63-73. This article recommends that a corporate consumer affairs office play an essential role in management decision-making. The consumer affairs office functions as a link between the consumer and the corporation and as such can provide an "early warning" system which enables a corporation to correct past mistakes, to devise solutions to present problems and to promote intelligent growth.

2. LaBarbera, Priscilla A., and Rosenberg, Larry J., *How Business Can Get Closer to Consumers*, New York University Faculty of Business Administration Working Paper Series, #78-10, (New York, January 1978). This paper discusses sources of consumer input and outlines a five step guide for designing a consumer information system which promises to narrow the gap between what consumers need and what a company thinks consumers need.

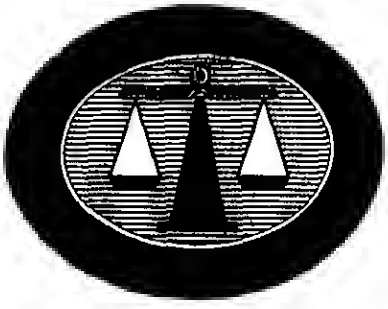
3. Rosenberg, Larry J., Czepiel, John A., and Cohen, Lewis C., "Consumer Affairs Audits, Evaluation and Analysis," *California Management Review*, Vol. XIX, No. 3, pp. 12-20 (Spring 1977). This article describes a consumer audit to evaluate the effectiveness and efficiency of a corporation's consumer affairs activities; the audit also can become part of an overall assessment of corporate social responsiveness.

4. Ross, H. Laurence, and Littlefield, Neil O., "Complaint As A Problem-Solving Mechanism," *Law and Society Review*, Vol. 12, pp. 199-216 (Winter 1978). This article evaluates the complaint-handling procedures used by a major retailer of television sets and appliances in the Denver metropolitan area.

Appendix C

Announcing the Ford Consumer Appeals Board. People who listen to both sides of a service problem.

New from Ford Motor Company and its Maryland Ford and Lincoln-Mercury dealers.



These people constitute the Ford Consumer Appeals Board, a new, impartial "service jury." They will listen to both sides of an unsolved service problem and try to help you solve it . . . *after* you've taken these steps:

Step one: If you have any kind of service-related problem, first discuss it with your dealer. He'll do everything he reasonably can to solve the problem. That's how he stays in business, so most problems stop there.

The new step: If the problem still isn't being solved to your satisfaction, call this toll-free number: 1-800-241-8450. The Ford Consumer Appeals Board operator will put you in touch with a Ford Motor Company representative. In most cases, he or she can help you. If not, the problem will be presented to the Board.

The Ford Consumer Appeals Board will meet to seek a fair and just decision in each individual case. And the Board's final decision is binding on Ford Motor Company and the Ford or Lincoln-Mercury dealer involved. *But it is not binding on the customer.*

The Ford Consumer Appeals Board. It's a better idea we think you'll never need. But just in case . . .

Jot down and keep this toll-free number: 1-800-241-8450

The Board is available only for service-related complaints involving Ford Motor Company vehicles and Maryland Ford and Lincoln-Mercury dealers. It will not review complaints arising from the vehicle sale transaction; complaints currently in litigation or cases that involve alleged personal injury or property damage; or complaints involving requests for consequential damages.

Appendix D

Customer Follow-up Questionnaire

1. Do you feel your complaint was resolved fully? ____ partially? ____ not at all? ____.
2. Were you satisfied with the nutcome of your hearing?
   Yes____ No____
   Why?_____
3. Prior to complaining to the arbitration panel, do you believe your dealer (distributor/retailer) made an adequate effort to resolve your complaint?_____; made a partial effort to resolve it?_____; made no effort? _____.
4. At the hearing did you have the chance to bring out all the issues you thought important about the case? _____
   If not, why not? _____
   _____
5. After contacting the arbitration panel, do you believe your complaint was handled quickly (a) by (name of company)? Yes/No; (b) by the arbitration panel? Yes/No.
6. Do you feel the arbitrators were fair? Yes_____ No_____.
   Why? _____
   _____
7. Were you treated satisfactorily in your phone contacts with the staff?
   Yes____ No____.
8. Would you use these serviees again if the need arose in the future?
   Yes____ No____ .
9. Do you have any suggestions as to how these eomplaint handling procedures could be improved?____
   _____
   _____

The following information is of great interest to us. Please include if you desire:

Name: _____

Address: _____

Phone number: home _____ work_____

Hearing number:_____

Product: _____

Thank you for filling out this form. Your answers and comments will help us in evaluating and improving our dispute resolution process.

Appendix E

Complaint Control Log

No.	Customer Name	Date Complaint Filed	Nature of Complaint	Date Mediation Completed	Date of Company Response	Hearing Date	Decision Sent to Parties	Date for Company Action	Verification of Action	Customer Evaluation Sent	Customer Evaluation Received

Appendix F

State and Local Consumer Affairs Offices Offering Arbitration

Governor's Office of Consumer Affairs — Georgia
225 Peach Street, N.E.
Suite 400
Atlanta, Georgia 30303
(404) 656-3790 (out-of-state)
800-282-4900 (in state)

Maryland Consumer Protection Division
Office of Attorney General
26 South Calvert Street
Baltimore, Maryland 21202
(301) 383-3700

Montgomery County Office of Consumer Affairs
611 Rockville Pike
Room 201
Rockville, Maryland 20852
(301) 279-1776

Rhode Island Public Protection Consumer Unit
Department of the Attorney General
56 Pine Street
Providence, Rhode Island 02903
(401) 277-3163

Rhode Island Consumer Council
365 Broadway
Providence, Rhode Island 02902
(401) 277-2764

Arlington County Office of Consumer Affairs
2049 15th Street, N.
Arlington, Virginia 22201
(703) 558-2142

Fairfax County Department of Consumer Affairs
4031 University Drive
Fairfax, Virginia 22030
(703) 691-3214

Virginia State Office of Consumer Affairs
Department of Agriculture and Consumer Services
825 E. Broad Street Box 1163
Richmond, Virginia 23209
(804) 786-2042